

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Aqua Illinois, Inc.,	)	
General Increase in Water	)	Docket No. 11-0436
and Sewer Rates	)	

**BRIEF ON EXCEPTIONS ON REHEARING OF  
  
THE PEOPLE OF THE STATE OF ILLINOIS**

**The People of the State of Illinois  
By LISA MADIGAN, Attorney General**

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## **I. Introduction**

On March 16, 2012, Viscofan USA, Inc. (“Viscofan”) filed a Petition for Rehearing of the Illinois Commerce Commission’s (“Commission”) Final Order on the Commission’s decision to adopt the Commission Staff’s (“Staff”) proposed increase of 20% to the Large General Service Rate. Rehearing was granted by the Commission on April 4, 2012. On rehearing, Viscofan submitted an updated analysis regarding the construction of its own water treatment facilities and its ability to self-supply and leave the Aqua system. Viscofan’s cost study showed that it was more economical for Viscofan to self-supply rather than stay with Aqua Illinois, Inc. (“Aqua”) at the rate adopted in the Final Order. The People of the State of Illinois, by and through Lisa Madigan, Attorney General (“People” or “AG”), Staff, Viscofan, and Aqua submitted Initial Briefs on July 22, 2012 and Reply Briefs on July 2, 2012. The People argued that, in order to protect the other service classes, Viscofan’s rate increase should not be lowered unless there was a long-term contract between Viscofan and Aqua setting negotiated terms and conditions to ensure that Viscofan will remain on the system for longer than four years.

The Proposed Order on Rehearing was issued on July 23, 2012. The Proposed Order reduces the increase for Viscofan from 20% to 12.5% and increases the rates of other customer classes to cover the revenue reduction resulting from the proposed Viscofan rate decrease. While it orders the continuation of the contract between Viscofan and Aqua that contains a four-year term, it would effectively modify that contract by reducing the tariffed rate paid by Viscofan. The People submit their Brief on Exceptions below.

## **II. The Commission Should Not Reduce Viscofan’s Rate Increase.**

The Proposed Order suggested that limiting the increase to Viscofan's rates to 12.5% will give Viscofan an incentive to remain on the Aqua system. The Proposed Order would increase rates to other customers, but suggests that Viscofan's reduction will limit further shifting of revenue responsibility to other customers that occurs as a result of setting the rate for Viscofan below its calculated cost of service. The People except to this conclusion and request that the Commission not shift revenue responsibility to other service classes, even more than the original 20% increase did. The best way to reduce the risk of Viscofan leaving the system is to require that Aqua and Viscofan negotiate a contract of more than four years duration that provides predictability to both Viscofan and Aqua.

The Proposed Order acknowledged that a longer contract term, such as 10 years, could have benefits. Proposed Order at 6. But the Proposed Order expressed concern over the logistics of such a requirement and states that "the AG's proposal does not explain how the rates themselves would be set in such a contract between Aqua and Viscofan. Currently, the rates applicable to Viscofan are not actually set by the parties to the four-year contract. Rather, they are set in Commission rate orders." *Id.* The People's proposal is consistent with the practices throughout not just the utility industry but in any business with an especially large customer. AG Ex. 3.0 at 4-6 and AG Ex. 3.02. As provided in Section 9-102.1 of the Public Utilities Act, the Commission may approve contracts between a utility and its special customers, and "[s]ervice under the contracts shall be provided on such terms and for such rates of charges as the public utility and the customer agree upon, without regard to any rate schedules the public utility may have filed with the Commission under any other Section of Article IX of this Act." 220 ILCS 5/9-102.1(a).

As shown in Aqua's response to the Administrative Law Judge's Post-Record Data Request, lowering Viscofan's rate increase to 12.5% will, as expected, increase the other service classes' rates even more than the dramatic increases they have already experienced. For example, both the Ivanhoe and Ravenna Water Divisions have seen average bill increases of over 200% (209% for Ivanhoe and 211% for Ravenna) as a result of the Final Order issued in February, 2012. This does not include the fact that Ivanhoe's sewer rate has also rose 382.1%. The February Order caused the average bill in Ivanhoe to rise from \$32.88 to \$101.63 for water and from \$18.67 to \$90.04 for sewer. The average bill in Ravenna rose from \$47.14 to \$146.83. These examples do not even include the other divisions, some of which experienced increases close to 100%. Aqua Response to ALJ Post Record Data Request Attach 02. The Commission should not increase these customers' rates further on rehearing.

Although Aqua's Post Record Data Request Response shows that the increase based on the Proposed Order on Rehearing would not be great when compared to the increases already in place from the February Order, the issue is that adopting the Proposed Order would create a counterincentive towards further negotiations to address Viscofan's rate. The Commission should not set such a precedent.

If the Commission is not going to protect these consumers by ensuring that Viscofan stays on Aqua's system in the long run, then the Commission should not place an additional burden on these consumers now by lowering Viscofan's rate increase from 20% to 12.5%. As shown above, Aqua's other customers are already suffering under crushing increases to their rates. To place even more of Viscofan's cost of service burden on these customers would be extremely harmful and make it very difficult for customers to pay their water and sewer bills. The Commission should reject the Proposed Order's conclusion and not permit such a situation.

Therefore, as discussed above, the Commission should reject the decrease in Viscofan's rate recommended in the Proposed Order. In the alternative, if the Commission modifies the rate for Viscofan, it should also require in its Final Order that Viscofan and Aqua enter into a contract under Section 9-102.1 of the Public Utilities Act of more than four years to address Viscofan's concerns so that limiting Viscofan's rate increase does not benefit just one customer (i.e. Viscofan), but all of Aqua's customers by providing them with a reduction in the risk that Viscofan will leave when the next rate increase is requested.

### **III. Proposed Language**

The language in the Proposed Order appearing on pages 5-6 should be modified as set forth below:

#### **Commission Analysis and Conclusions**

On rehearing, Viscofan presented an updated analysis of the "economics" and timeline for constructing its own water system. The updated analysis was prepared in 2012.

~~Although the four-year contract is in effect until 2016, if Viscofan does undertake construction of its own system during that period, there would seem to be little chance of retaining them as a customer of Aqua.~~

~~Based on the evidence as updated on rehearing, it now appears that if the 20% increase is left in place, it is more likely than not that Viscofan will undertake construction of its own system. Staff and AG do not appear to specifically contend otherwise, although they do oppose any reduction in the 20% increase as noted above.~~

~~If Viscofan does depart the system in favor of its own competitive supply option, other customers in the Consolidated Division containing the former Vermilion District would be adversely affected because Viscofan provides a significant contribution toward costs that would otherwise be borne by other customers.~~

~~While the Commission agrees with Staff that cost of service is an important consideration, the Commission believes it should be considered in the broader context of the Viscofan issue, which also involves, among other factors, the impacts on customers that would occur if Viscofan were to leave the system, as discussed above.~~

~~Upon consideration of the record and determinations above on this difficult issue, the Commission finds that the increase applicable to Viscofan should be reduced to 12.5%. This rate is approximately half way between the above referenced 20% increase and the "less than 5%"~~

~~increase suggested by Aqua. The 12.5% increase is also fairly close to the alternative rate increase proposed by Staff which was intended to recover the same percentage of Viscofan's cost of service as was approved in Docket No. 04-0442 in the event the Commission decided to reduce the 20% increase. It is also close to the 13.75% increase proposed by Aqua in the original proceeding, especially when considering that the 13.75% was based on Aqua's proposed revenue requirement.~~

~~In the Commission's view, lowering the increase to 12.5% will produce rates that should give Viscofan an incentive to remain on the Aqua system which would benefit other customers because Viscofan provides a large contribution toward costs that would otherwise be borne by other customers while limiting, at least to the extent possible, any further shifting of revenue responsibility to other customers that occurs whenever rates are set below calculated cost of service.~~

~~As noted above, the AG recommends that no changes be made to the rates previously approved in this docket, and that instead the Commission should "require Aqua to attempt to negotiate a long term contract with Viscofan to address the costs and risks associated with serving Viscofan."~~

~~While a longer contract term, such as 10 years, could have benefits, the AG's proposal does not explain how the rates themselves would be set in such a contract between Aqua and Viscofan. Currently, the rates applicable to Viscofan are not actually set by the parties to the four-year contract. Rather, they are set in Commission rate orders. Given the unknowns, and other circumstances, it is difficult to see how the record would support an assumption that Viscofan would view a 10 year contract as a viable alternative to constructing its own system.~~

~~In any event, the Commission again finds that the record supports a continuation of the four-year term contained in the provisions of Aqua's current tariffs. The AG's proposal will not be adopted.~~

~~As indicated above, the Commission finds that the rate increase for Viscofan should be reduced to 12.5%. The revenue shortfall created by this change should be allocated to other customer classes through usage charges in the consolidated division of which the Vermilion district is now a part.~~

The Commission finds that it would be overly burdensome to further increase the rates of Aqua's other customer classes in order to further reduce Viscofan's rates below its cost of service. As the other customer classes are already facing significant increases and carrying a large portion of Viscofan's cost of service, the Commission finds that it is not appropriate to change the 20% rate increase for Viscofan.

The Commission recognizes that the Public Utilities Act expressly allows utilities to enter into contracts with customers at Section 9-102.1. That Section provides that "the Commission may approve one or more rate schedules filed by a public utility that enable the public utility to provide service to customers under contracts that are treated as proprietary and confidential." 220 ILCS 5/9-102.1. The section continues that "Service under the contracts shall be provided on such terms and for such rates or charges as the public utility and the customer agree upon, without regard to any rate schedule the public utility may have filed with the Commission under

any other Section of Article IX of this Act.... For purposes of Section 3-121 of this Act, the amounts collected under the contracts shall be treated as having been collected under rates that the public utility is required to file under Section 9-102 of this Act.” *Id.* Contracts between utilities and large users or customers with special needs or requirements are not unusual and constitute a vital tool available to utilities and businesses to provide appropriate service.

In light of the fact that Viscofan and Aqua have already agreed to a four year contract under the current rate, we will not modify that rate. Nonetheless, we encourage Aqua to work with Viscofan to address its concerns, including the cost of service and the cost to self-provision. A negotiated contract for Aqua service may address Viscofan’s concerns while providing Aqua and its other customers some assurance that Viscofan will remain on Aqua’s system. In the absence of a serious effort to address Viscofan’s concerns we are not willing to additionally burden the other customer classes with rate increases to cover Viscofan’s cost of service.

#### **IV. Conclusion**

For the foregoing reasons, the People request that the Commission modify the Proposed Order as recommended herein.

Respectfully Submitted,

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